

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**



# 74-2149

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
Docket No. 74-2149

1/5

Connecticut Transportation Coalition,  
State of Connecticut National Association  
for the Advancement of Colored People  
Conference of Branches, Connecticut River  
Ecology Action Corporation, and Charlotte  
Kitowski, Thomas Sharpless, Ben Andrews for  
themselves and all others similarly situated

Plaintiffs

v.

Thomas J. Meskill, Governor of the State of  
Connecticut, Joseph Burns, Commissioner of  
the Department of Transportation of the State  
of Connecticut, and Nathan Agostinelli,  
Comptroller of the State of Connecticut

Defendants

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APPELLEES' BRIEF  
ON APPEAL  
from  
UNITED STATES DISTRICT COURT OF CONNECTICUT

Decision of Clarie, J.  
Filed on July 23, 1974  
Civil No. H 74-70

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To be argued by:

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I.

STATEMENT OF ISSUES

1. Do the provisions of Title 23 U.S.C. § 109(h) provide a right to these plaintiffs to injunctive relief in the United States District Court enjoining the defendants from proceeding with the "People Mover" contract and its construction?
2. Do the provisions of 42 U.S.C. § 1857h-2(a) of the Clean Air Act or of 28 U.S.C. § 1331 entitle these plaintiffs to the injunctive relief requested?

## STATEMENT OF THE CASE

A.

### Nature of the Case

The individual plaintiffs are the chairpeople respectively of the non-individual plaintiffs in this action. The defendants are the Governor, Comptroller and Commissioner of the Department of Transportation, of the State of Connecticut.

The plaintiffs filed their Motion for Preliminary Injunction wherein they sought issuance of an injunction conformable to the prayers for relief set forth in their complaint. The plaintiffs' main request of the Court is to enjoin the Governor and other named state officials from authorizing the expenditure of any further monies out of the Public Service Tax Fund or the mass transportation portion of the Transportation Fund on the existing "People Mover" contract, so-called, with the Ford Motor Company. This contract effective November 15, 1973 required Ford to design, fabricate, install and test-operate an automatically controlled transportation system at Bradley International Airport located in Windsor Locks, Connecticut. The Court issued a show cause order requiring the defendants to answer and state why a preliminary injunction should not issue. The defendants

moved to dismiss the complaint on the grounds that the Court lacked jurisdiction over the subject matter and that the complaint failed to state a claim upon which relief could be granted. Considerable evidence was presented at the hearing, held on both motions, by both sides in the form of testimony and exhibits related to the respective merits of their claims.

B.

Disposition in Court Below

The Court found that the plaintiffs' allegations do not state a claim upon which relief can be granted. The Court denied relief and dismissed the action pursuant to Rule 12(b)(6), Fed. R. Civ. P., (Op. p.2 and p.25).

The Court concluded from all the evidence presented at the hearings "that these plaintiffs sharply disagree with the policy decision of the Transportation Department and the Governor to expend the 4.5 million dollars from the State's transportation fund for this demonstration test-project at Bradley Field" in Windsor Locks, Connecticut, (Op. p.3). The Court refrained "from ruling upon the issues of state law raised in this case because absent the Court's finding substantive federal statutory and constitutional issues, pendent jurisdiction should not be exercised," (Op. p.24).

C.

Jurisdiction

The Complaint (p. 1 of Complaint) alleges jurisdiction for this action is based upon the following:

- a) 42 U. S. C. § 1983;
- b) 28 U. S. C. § 1343;
- c) 28 U. S. C. § 1331;

"This case arises under the laws of Congress relating to the environment, clean air, mass transportation, federal highways and aviation."

- d) 42 U. S. C. § 1857h-2;
- e) Amount in controversy exceeds \$10,000.

D.

Plaintiffs' Claims

In their complaint, plaintiffs claim several alleged violations of federal statutory law and regulations (Complaint, p. 5, par. 8a; p. 6, par. 8b; p. 7, par. 8g; p. 8, pars. 9 and 11) together with a claimed invasion of equal protection and due process rights under the fourteenth amendment (Complaint, p. 8, par. 11); in addition the complaint charges several acts of unlawful state action (Complaint, pp. 4, 5, 6, 7, 8) by the defendants.

E.

Statement of Facts

I.

Background of Case

1. The rapid expansion of the public's use of Bradley International Airport in Windsor Locks, Connecticut created a long-felt need for an off-site parking lot, which was planned to accommodate parking for 1,500 cars, at a location three-fourths of a mile from the airport terminal, (Op. p. 8).

2. It is presently estimated that 2.5 million passengers presently use the Bradley Airport each year for travel, and an additional 7.5 million well-wishers travel there to see friends or acquaintances at the time of their flight departure or deplaning, making a total of 10 million patrons a year, (Op. p. 11, Tr. 219).

3. The transportation department decided that this open location and need afforded a feasible opportunity to experiment with a test operation for an automated transportation system in a tightly controlled environment, without uprooting people and businesses; and which could be prospectively evaluated for use as a practical and effective mode of widespread intracity transit use or adapted to transport people from suburban areas to the city, (Op. p. 8, Tr. 313).

4. If this plan were successfully accomplished, Connecticut could then be the first state in the Nation to demonstrate an effective urban use of an automated transit system; such success would justify its applying for and receiving a priority-grant of substantial federal funds, (Op. p. 8).

5. The initial decision to consider building the "Personal Rapid Transit" (PRT) System (Pls' Exh. 6) at Bradley International Airport originated within the Connecticut Department of Transportation around May or June, 1973, (Op. p. 7).

6. On June 22, 1973, the State Department of Transportation solicited manufacturers' proposals from several experienced designers of such equipment, outlining the basic criteria upon which proposals might be submitted, (Op. p. 9).

7. Seven prospective manufacturers responded with proposals embodying varying types of electrically powered units, (Op. p. 9).

8. Ford Motor Company of Dearborn, Michigan was unanimously selected by the Department of Transportation evaluation committee (Tr. 228-230) to provide the design, construction, construction inspection, system testing and checkout of the proposed unit, (Op. p. 10).

9. The design and construction were considered to be unique and the automation features were covered by twenty or more Ford patents, (Op. p. 10). It seemed impractical and unwise to separate the design and construction, because of the unique operational features of the system, (Op. p. 10, Tr. 222).

10. Commissioner Shugrue testified that the project might have qualified for federal funds as a demonstration project, but no such funds were then available, (Tr. 205-208). He did not know whether or not the State Department of Transportation was eligible for Federal Urban Mass Transportation Funds for such a project after March, 1973. He admitted that the department did withdraw an application for federal funds to prepare a Master Plan at Bradley Airport in the fall of 1973, but the reason for the withdrawal was not to evade the requirement of an environmental impact report for this project, (Op. p. 11, Tr. 238-241).

11. By letters dated August 7, 1973 and August 21, 1973, the State Department of Transportation requested the approval of said project by the State Bonding Commission, at a cost not to exceed 4.5 million dollars, (Tr. 302, Op. p. 12). The Commission approved the project at its official meeting held on August 24, 1973, (Tr. 303).



12. When the Commission approved the project on August 24, 1973, Executive Order No. 19 relating to energy efficiency (Pls' Exh. 15) had not been issued and was not a factor in its decision, (Tr. 297-299, Op. p. 12).

13. The Attorney General approved the contract documents as to form on November 15, 1973 and thereupon the contract with Ford was legally in force and effect, (Op. p. 13, Tr. 261-262, Pls' Exh. 4).

14. At the time of the hearing held on April 2, 3, 4 and 9, 1974, \$78,000 had already been spent up to February 26, 1974; and 15.2% of the work which included the \$78,000 figure was billable as of March 22, 1974, in the total amount of \$302,000, (Op. p. 13, Tr. 97). Work on this project has been continuing up to the present time.

## II.

### Executive Order No. Sixteen

15. Executive Order No. Sixteen was issued by the Governor to take effect immediately and was filed on October 4, 1972, (Pls' Exh. 77).

16. Executive Order No. Sixteen applied solely to state funded non-federal projects, (Exh. 7).

17. Executive Order No. Sixteen (Pls' Exh. 7) states in part:

"(1) That each state department, institution or agency shall review its policies and practices to insure that they are consistent with the state's environmental policy set forth at Section 22a-1 of the General Statutes.

\* \* \* \*

"(6) That evaluations required by this Order shall be in accordance with guidelines to be promulgated by the Governor." (Emphasis added)

18. No official guidelines or standards have ever been established or promulgated by the Governor, as prescribed by said Executive Order to make it operative, (Op. p. 16, Tr. 116-123).

19. Public Act 73-362, approved June 22, 1973, will become effective February 1, 1975. It requires the preparation and filing of environmental impact statements on all state projects affecting the environment and will ultimately replace Executive Order No. Sixteen, (Op. p. 16, Tr. 225-228).

### III.

#### Executive Order No. Nineteen

20. Executive Order No. Nineteen was issued by the Governor to take effect on October 3, 1973 (Pls' Exh. 15) and was intended to implement energy conservation measures.

21. Executive Order No. Nineteen in paragraph 3 stated:

"Department of Transportation

"(a) The Commissioner of Transportation is directed to accelerate the efforts of the Department with respect to the development of mass transit programs, car pooling, and such other measures, consistent with the Department's statutory mandate which will act to conserve fuel resources."

#### IV.

##### PACER

22. Title 23 U. S. C. Sec. 109(h) directs that the Secretary of Transportation promulgate guidelines designed to assure that adequate consideration is given to possible social, economic and environmental effects of proposed federally funded highway projects and that the decisions on such projects are made in the best overall public interest.

23. Such guidelines were promulgated by the Secretary and are set forth in PPM 90-4 dated July 1, 1973, (Exh. 8b).

24. In compliance with the mandate of Title 23 U. S.C., Sec. 109(h) and the directives set forth in PPM 90-4, the State of Connecticut compiled and submitted to the federal authorities its "Action Plan" called PACER (Plan of Action for Connecticut Environmental Responsibility, (Pls' Exh. 8a, 8b).

25. "The guidelines recognize the unique situation in each state and do not prescribe specific organizations or procedures," (PPM 90-4, p. 1).

26. The topics to be covered by the Action Plan are outlined in PPM 90-4, pp. 3-6.

27. Failure to follow the Action Plan may result in withholding location approvals or such other project approvals as is desired appropriate by the FHWA (PPM 90-4, par. 7(a)).

28. An approved Action Plan may be revised to meet changed circumstances or to permit adoption of improved procedures or arrangements of responsibilities, (PPM 90-4, par. 7 (d)).

III.

ARGUMENT

A.

PLAINTIFFS DO NOT HAVE AN ENFORCEABLE RIGHT ARISING UNDER THE FEDERAL HIGHWAY ACT OF 1970 (TITLE 23 U. S. C. § 109(h)) TO COMPEL THE DEFENDANTS TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT FOR THE NONFEDERAL AID PROJECT OF CONSTRUCTING THE "PEOPLE MOVER" AT BRADLEY INTERNATIONAL AIRPORT.

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The sole purpose and goal of the plaintiffs in this action is to stop construction of the People Mover at Bradley International Airport located in Windsor Locks, Connecticut. In quest of their goal, these plaintiffs seek the assistance of the District Court to enjoin the expenditure of any further funds available to the defendants for such a project, (Complaint, Prayers for Relief, pp. 8-10).

In the first legal argument as briefed by the plaintiffs-appellants, emphasis is placed upon an alleged failure by the defendants to comply with the provisions of Executive Order Number Sixteen. Plaintiffs argue that the defendants had an obligation to comply with Executive Order No. Sixteen because it was included in PACER. They argue further that since PACER resulted from the federal directives contained in PPM 90-4 and was prepared by the State to assume eligibility for federal fund-

ing, the State of Connecticut has become obligated thereby to prepare an environmental impact statement on this state project, (Pls' Brief, p. 15). Plaintiffs then conclude that their right to enforce such State obligation "should be as great as their right" to restrain proper officials from failing to prepare environmental impact statements required by NEPA. (Title 43 U. S. C. § 4332 (2)(C)).

As we already stated, plaintiffs argue that the defendants have obligated themselves pursuant to Title 23 U. S. C. § 109(h) to comply with Executive Order No. Sixteen. The defendants maintain that no such obligation has been created by said Section 109(h) or by the guidelines of the Secretary of Transportation appearing in PPM 90-4. The inclusion of Executive Order No. Sixteen in PACER is not a representation intended or even able to induce or mislead the United States Government in its commitment of federal funds to any project within the State of Connecticut, either at that time, at the present time, or at any time in the future. There can be no contract with the federal government for the commitment of federal funds on any project in Connecticut unless and until an express application therefor is made by the State and approval of the project and its location and purpose has been given by the federal government. The inclusion or exclusion

of Executive Order No. Sixteen in the text of PACER in no way qualifies or disqualifies the State of Connecticut from applying for and receiving federal funding for highway construction.

Nevertheless, plaintiffs claim that "since the defendants agreed to utilize Executive Order No. Sixteen, as well as all of the other procedures contained in their action plan, in exchange for assured eligibility for federal funding, that the State of Connecticut has become obligated to prepare environmental statements on state projects by virtue of its agreement with Federal Highway Administrator", (Pls' Brief, p. 15). We need only to point out that PACER is an Action Plan responsive to the requirements of guidelines set forth in PPM 90-4. The inclusion or exclusion of Executive Order No. Sixteen in PACER in no way alters the clear mandate of NEPA which requires that an environmental impact statement must be prepared and filed by the responsible federal agency in all "major federal actions significantly affecting the quality of the human environment", 42 U. S. C. § 4332 (1)(C). The non-implementation of Executive Order No. Sixteen in no way operates to obscure or redirect the goal of PPM 90-4 to fully support the provisions of Section 109(h) of Title 23 U. S. C. There is no merit to the plaintiffs' claim that "they are raising substantial federal questions regarding the enforcement of agreements entered into pursuant to Title 23 U. S. C.

§ 109(h) and moreover that the actions of the defendants have created in the plaintiffs an enforceable right arising under federal law", (Pls' Brief, p. 16). Such a hopeful conclusion has been reached by the plaintiffs without support from the facts as presented to and found by the Court and without establishing by proper proof that such a right exists in these plaintiffs which merits protection of federal laws or of the Constitution of the United States.

The People Mover project is funded entirely with state funds. The State of Connecticut has never applied for any federal aid for this project; therefore, there exists no basis for applying Title 23 U. S. C. Section 109(h), (Op. p. 14). Since this project is solely state funded, there is no obligation upon the State of Connecticut requiring such an environmental evaluation as is expressed in federal environmental legislation, (Op. p. 15).

Executive Order No. Sixteen (Pls' Exh. 7) states in part:

"(1) That each state department, institution or agency shall review its policies and practices to insure that they are consistent with the State's environmental policy set forth at Section 22a-1 of the General Statutes.

\* \* \* \*



"(6) That evaluations required by this Order shall be in accordance with guidelines to be promulgated by the Governor." (Emphasis added)

No official guidelines or standards have ever been established or promulgated by the Governor as prescribed by said Executive Order to make it operative, (Tr. 116-123, Op. p. 16). Without such guidelines, there can be no judicial enforcement of this Executive Order such as is sought by these plaintiffs, (Op. p. 16).

Public Act 73-562 of the Connecticut General Assembly entitled "An Act Concerning the Adoption of a Connecticut Environmental Policy Act", approved on June 22, 1973, will become effective February 1, 1975. It requires the preparation and filing of environmental impact statements on all state projects affecting the environment and will ultimately replace Executive Order No. Sixteen, (Op. p. 16, Tr. 225-228). Connecticut, in the meantime, until such standards are filed, may undertake local state projects financed solely with state funds, without being subject to the PACER requirements, (Op. p. 17, Pls' Exh. 8a at 22).

B.

1.

FEDERAL JURISDICTION FOR THIS CAUSE OF ACTION  
DOES NOT EXIST UNDER 42 U. S. C. § 1857h-2(a)  
(CLEAN AIR ACT) OR UNDER 28 U. S. C. § 1331.

In their second main argument appearing on page 16 of their brief, plaintiffs allege that this action is also brought to the federal court pursuant to the citizens' suit provisions of the Clean Air Act of 1970, Title 42 U. S. C. § 1857h-2, Pub. L. No. 91-604, 84 Stat. 1676. This law requires that the various states must meet national standards for air quality within a given period of time. Under 42 U. S. C. § 1857c-4, the Administrator of the Environmental Protection Agency is required to publish proposed national primary and secondary ambient air quality standards for air pollutants. The plaintiffs argue that the defendants' actions in proceeding with the "People Mover" project "are in violation of the ambient air standards for automobile pollutants established by the Administrator of the Environmental Protection Agency pursuant to Title 42 U. S. C. § 1857c-4", (Pls' Brief, p. 16).

The pertinent portions of 42 U. S. C. § 1857h-2(a) upon which the plaintiffs are relying provides as follows:

" . . . Any person may commence a civil action on his own behalf -

"(1) against any person . . . who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation. . . ."

Under 42 U. S. C. § 1857c-5, each state is required to submit to the Administrator, within time periods specified in the law, an implementation plan which provides for implementation, maintenance and enforcement of such standards established by the Administrator. These plaintiffs recognize and admit: (Pls' Brief, pp. 16, 23) (1) that this State does not now have an implementation plan accepted and approved by the Administrator (Pls' Brief, p. 23), (2) that the State of Connecticut was given until January 1, 1974 to revise its state implementation plan and that that date has subsequently been extended, (Pls' Brief, p. 17, Tr. p. 329), and (3) that the state might and probably would receive an extension once its implementation plan was filed and that it therefore would not be required to attain the national ambient air standards until 1977, (Pls. Brief, p. 17, Tr., p. 340).

As the District Court pointed out in its decision that "while the Clean Air Act may afford standing to these plaintiffs for adjudication of the alleged violation," they have no means to effect an enforcement, absent the promulgation of statutorily enforceable standards. It is within the administrative planning requirements of the federal government to decline the approval of future federally funded projects for Connecticut until such time as the State has promulgated its own standards", (Op. pp. 18-19).

As we have already stated herein, the Clean Air Act establishes deadlines for action to be taken by the State and by the Administrator of the Environmental Protection Agency. If such deadline has not been met by the Administrator in our case, this challenge by these plaintiffs should properly be directed against the Administrator. (See 42 U. S. C. 1857h(2(a), 2(b).) On the other hand, if such deadlines have not, are not, or will not be met by the State of Connecticut, this challenge should be directed, as required by this law, against the State of Connecticut by the administrator, and not by these plaintiffs. (See 42 U. S. C. 1857c-5(c).)

So, too, if this installation of the Ground Transportation System at Bradley International Airport presents a threat to the standards to be used by the State under the Clean Air Act, it is not appropriate that such determination be taken away judicially from the administrator whose duty it is under the Act to make such a decision and to take such measures as are necessary to promote the purposes of the Clean Air Act, 42 U.S. C. § 1857c-8.

The propriety of action expected of the Administrator in a case such as is raised here by these plaintiffs is best

expressed by the Court in Citizens Association of Georgetown v. Washington, 370 F. Supp. 1101 where at 1106 the Court stated as follows:

"The question then arises as to whether the projects, if they are likely to prevent attainment of the standards in 1977, are presently in violation of the Clean Air Act's requirement that the District of Columbia have in effect by a date certain a plan to achieve the national standards 'as expeditiously as practicable.' 42 U. S. C. § 1857(a)(2)(A)(i). This question requires a determination by this court as to whether the D.C. implementation plan will be successful. The Court must decline such review of the plan. Where, as here, the applicable portions of the implementation plan are completed after the congressionally prescribed effective date of the plan, and after construction of new and unreviewed sources of air pollution has begun, the Court believes it appropriate to defer to administrative judgment regarding the necessity for retroactive application of the completed implementation plan to insure that the primary ambient air standards will be attained 'as expeditiously as practicable.'"

In our case, the plaintiffs urge this appellate tribunal as they urged the District Court, to adopt the rationale from the Citizens Association case in order to determine that the District Court had jurisdiction over the subject matter, (Pls' Brief, p. 24). There the Court found that while jurisdiction did not exist under 24 U. S. C. § 1857h-2(a), it did exist under 23 U. S. C. § 1331. In urging this argument, the plaintiffs can receive no comfort from the Citizens

Association case. The District Court carefully reviewed and distinguished the Citizens Association case from the plaintiffs' case and concluded that the Clean Air Act does not present a basis for jurisdiction by the District Court of this cause of action as alleged in the complaint and presented during the course of a full trial, (Op. pp. 19-21).

2.

NOTICE REQUIRED UNDER THE CLEAN AIR ACT

The Clean Air Act expressly sets forth the following requirement before a citizens suit may be instituted, (42 U. S. C. § 1857h-2(b)):

"No action may be commenced -

(1) under subsection (a) (1) of this section -

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

"(2) under subsection (a) (2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator.

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 1857c-7(c) (1) (B) of this title or an order issued by the Administrator pursuant to section 1857c-8a of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation."

On page 25 of their brief, plaintiffs assert that "in the instant case, parenthetically, notice was not a problem." We take strong issue with this statement which does not accurately set forth the claims of these defendants made at great length during the course of the trial, that notice was not given by these plaintiffs as required by Section 1857h-2 of the Clean Air Act. On this point alone, these plaintiffs did not establish a right to bring this action. While the plaintiffs seize upon a letter from Dr. Sharpless to Mr. McLennon, Regional Administrator of the U. S. Environmental Protection Agency, (Pls' Exh. 8) as satisfying the requirements of notice to commence this action, there was no finding by the court that the evidence as presented by these plaintiffs satisfied the requirement of notice under the Clean Air Act. The transcript of evidence discloses that the defendants received no notice from the plaintiffs required by the provisions of the Clean Air Act, prior

to the commencement of this suit seeking to stop construction of the People Mover, (Tr. pp. 410, 411, 425-6, 430).

IV.

CONCLUSION

The issues on this appeal as presented and argued in the plaintiffs' brief do not establish that reversible error was committed by the District Court.

The conclusions of the District Court were reached only after findings were made based upon all the facts presented by the parties during a full hearing upon the court's order requiring the defendants to answer and show cause why a preliminary injunction should not issue as requested by the plaintiffs.

The defendants respectfully urge that the District Court's "Ruling on Plaintiffs' Motion for Injunctive Relief and Defendants' Motion to Dismiss" and judgment entered thereon be affirmed.

Respectfully submitted

Robert K. Killian  
Attorney General

By:



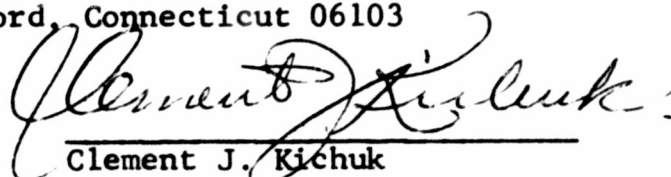
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CERTIFICATION OF SERVICE

This is to certify that a copy of this Brief was mailed  
via U. S. Mail, postage prepaid on December 30, 1974, to:

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Clement J. Kichuk  
Assistant Attorney General

# POLICY AND PROCEDURE MEMORANDUM

Transmittal 259

90-4

September 21, 1972

## PROCESS GUIDELINES (ECONOMIC, SOCIAL, AND ENVIRONMENTAL EFFECTS ON HIGHWAY PROJECTS)

- Par. 1. Purpose  
2. Authority  
3. Definitions  
4. Policy  
5. Application  
6. Procedures  
7. Implementation and Revision  
8. Contents of the Action Plan  
9. Identification of Social, Economic, and Environmental Effects  
10. Consideration of Alternative Courses of Action  
11. Involvement of Other Agencies and the Public  
12. Systematic Interdisciplinary Approach  
13. Decisionmaking Process  
14. Interrelation of System and Project Decisions  
15. Levels of Action by Project Category  
16. Responsibility for Implementation  
17. Fiscal and Other Resources  
18. Consistency with Existing Laws and Directives

### 1. PURPOSE

To provide to Highway Agencies and Federal Highway Administration (FHWA) field offices guidelines for the development of Action Plans to assure that adequate consideration is given to possible social, economic, and environmental effects of proposed highway projects and that the decisions on such projects are made in the best overall public interest. These guidelines identify issues to be considered in reviewing the present organization and processes of a Highway Agency as they relate to social, economic, and environmental considerations, and in developing desirable improvements. The guidelines recognize the unique situation of each State and do not prescribe specific organizations or procedures.

### 2. AUTHORITY

Section 109(h), Title 23, United States Code, directs the following: "(h) Not later than July 1, 1972, the Secretary, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than 90 days after such submission, promulgate guidelines designed to assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been

fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

- (1) air, noise, and water pollution;
- (2) destruction or disruption of man-made and natural resources, esthetic values, community cohesion and the availability of public facilities and services;
- (3) adverse employment effects, and tax and property value losses;
- (4) injurious displacement of people, businesses and farms; and
- (5) disruption of desirable community and regional growth.

Such guidelines shall apply to all proposed projects with respect to which plans, specifications and estimates are approved by the Secretary after the issuance of such guidelines."

### 3. DEFINITIONS

a. Highway Agency - The State highway department or State department of transportation with the primary responsibility for initiating and carrying forward the planning, design, and construction of Federal-aid highway projects.

b. Human Environment - The aggregate of all external conditions and influences (esthetic, ecological, biological, cultural, social, economic, historical, etc.) that affect the lives of humans.

c. Environmental Effects - The totality of the effects of a highway project on the human and natural environment.

d. A-95 Clearinghouse - Those agencies and offices in States, metropolitan areas, and multi-State regions which perform the coordination functions called for in Office of Management and Budget (OMB) Circular A-95.

e. The following definitions are provided solely to clarify the terms "system planning,"

Exhibit 1

Addendum - 1.

"location," and "design" as they are used in these guidelines. A Highway Agency may choose to use different definitions in responding to these guidelines. If not stated otherwise, the following definitions will be assumed to be applicable:

(1) System Planning - Regional analysis of transportation needs and the identification of transportation corridors.

(2) Location - From the end of system planning through location approval.

(3) Design - From location approval through the approval of plans, specifications, and estimates.

#### 4. POLICY

a. It is the FHWA's policy that full consideration shall be given to economic, social and environmental effects in the development of proposed Federal-aid projects, that provisions for ensuring such consideration shall be incorporated in the decisionmaking process, and that decisions on such projects shall be made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and the costs of eliminating or minimizing possible adverse economic, social, and environmental effects.

b. The process by which decisions are reached should be such as to merit public confidence in the Highway Agency. To achieve this objective, it is the FHWA's policy that:

(1) Economic, social, and environmental effects be identified and studied early enough to permit analysis and consideration while alternatives are being formulated and evaluated.

(2) Other agencies and the public be involved in project development early enough to influence technical studies and final decisions.

(3) Appropriate consideration be given to reasonable alternatives, including the alternative of not building the project and alternative modes.

#### 5. APPLICATION

These guidelines apply to State Highway Agencies that propose projects for which plans, specifications, and estimates are approved by the FHWA. Other agencies forwarding projects for the approval of the FHWA need not develop the "Action Plan" specified herein, but shall be guided by the stated principles in

the development of such Federal-aid highway projects.

#### 6. PROCEDURES

a. To meet the requirements of these guidelines, each Highway Agency shall develop an Action Plan which describes the organization to be utilized and the processes to be followed in the development of Federal-aid highway projects from initial system planning through design.

b. The Action Plan should be consistent with the requirements of PPM's 20-8, 90-1, and of other applicable directives.

c. Involvement of other Federal, State, and local agencies, including A-95 Clearinghouses, and, where appropriate, agencies responsible for transportation planning in accordance with PPM 50-9, officials, and interested groups should be sought throughout the development stages of the Action Plan. Comments on the proposed Action Plan should be solicited from these agencies, groups, and individuals, and the Plan forwarded to the FHWA should include a summary of comments on the Plan (including the sources of such comments) and the State's disposition of them.

d. The FHWA, through its division and regional offices, will consult with the State in the development of the Action Plan and, within the limits of its resources, will be prepared to assist or advise.

e. The Action Plan shall be submitted to the Governor of the State for review and approval as a means of obtaining a high degree of interagency and intergovernmental coordination. Approval by the Governor may occur prior to submittal of the Action Plan to the FHWA, or, if desired by the State, may occur concurrently with FHWA approval.

f. The Action Plan shall be submitted to the FHWA not later than June 15, 1973, for approval. The FHWA will not give location approval on projects after November 1, 1973, unless the Action Plan has been approved.

#### 7. IMPLEMENTATION AND REVISION

a. The FHWA may review the States' implementation of their Action Plans at appropriate intervals. The FHWA may withhold location approvals, or such other project approvals as it deems appropriate, if the Action Plan is not being followed.

b. The Action Plan shall be implemented as quickly as feasible. A program of staged implementation for the period up to November 1, 1974, shall be developed and described

in the Action Plan. It is expected that all aspects of the Action Plan will be implemented by this date. If the Highway Agency believes that any provision in its Action Plan cannot be implemented prior to November 1, 1974, it shall present a schedule for the implementation of such provisions to the FHWA, which will consider the proposed schedule on a case-by-case basis.

c. If the schedule for implementation set forth in an approved Action Plan is not met, the FHWA may withhold location approvals or such other project approvals as it deems appropriate.

d. The Action Plan may be revised by the Highway Agency. Major revisions will be reviewed and approved by the FHWA by the same process as for the initial Action Plan.

#### 8. CONTENTS OF THE ACTION PLAN

a. The Action Plan shall indicate the procedures to be followed in developing highway projects, including organizational structure and assignments of responsibility by the chief administrative officer of the Highway Agency to positions or units within the Agency. Where participation of other agencies or consultants will be utilized, this should be so indicated. The topics to be covered by the Action Plan are outlined in the following paragraphs of this PPM.

b. The Action Plan should describe the procedures followed in developing the Action Plan and the steps taken to involve other agencies and the public during development of the Plan.

#### 9. IDENTIFICATION OF SOCIAL, ECONOMIC, AND ENVIRONMENTAL EFFECTS

a. Identification of potential social, economic, and environmental effects, both beneficial and adverse, of alternative courses of action should be made as early in the study process as feasible, in accordance with PPM's 90-1 and 20-8 and IM 20-4-72. Timely information on such effects should be produced so that the development and consideration of alternatives and studies can be influenced accordingly. Further, the costs, financial and otherwise, of eliminating or minimizing possible adverse social, economic, and environmental effects should be determined.

b. The Action Plan should identify:

(1) The assignment of responsibility for:

(a) Providing information on social, economic, and environmental effects of alternative courses of action during system planning, location, and design stages.

(b) Controlling the technical quality of social, economic, and environmental studies.

(c) Monitoring current social, economic, and environmental research; monitoring environmental effects of completed projects, where appropriate; and disseminating "state-of-the-art" information within the agency.

(2) Procedures to be followed to ensure that timely information on social, economic, and environmental effects:

(a) Is developed in parallel with alternatives and related engineering data, so that the development and selection of alternatives and other elements of technical studies can be influenced appropriately.

(b) Indicates the manner and extent to which specific groups and interests are beneficially and/or adversely affected by alternative proposed highway improvements.

(c) Is made available to other agencies and to the public early in studies.

(d) Is developed with participation of staffs of local agencies and interested citizens.

(e) Is developed sufficiently to allow for the estimation of costs, financial or otherwise, of eliminating or minimizing identified adverse effects.

#### 10. CONSIDERATION OF ALTERNATIVE COURSES OF ACTION

a. Alternatives considered should include, where appropriate, alternative types and scales of highway improvements and other transportation modes. The option of no highway improvement should be considered and used as a reference point for determining the beneficial and adverse effects of other alternatives. Appropriate alternatives which might minimize or avoid adverse social, economic, or environmental effects should be studied and described, particularly in terms of impacts upon specific groups and in relationship to 42 U.S.C. 2000d-2000d-4 (Title VI of the Civil Rights Act 1964) and 42 U.S.C. 3601-3619 (Title VIII of the Civil Rights Act of 1968). The key trade-offs among the alternatives should be presented.

b. The Action Plan should identify the assignment of responsibility and the procedures to be followed to ensure that:

(1) The consequences of the no-highway-improvement option are set forth, with data of a level of completeness and of detail consistent with that developed for other alternatives.

(2) A range of alternatives appropriate to the stage is considered at each stage from system studies through final design.

(3) The development of new transportation modes or the improvement of other modes are adequately considered, where appropriate.

(4) Non-transportation components, such as replacement housing, joint development, multiple use of rights-of-way, etc., are in coordination with transportation components.

(5) Suggestions from outside the Agency are given careful consideration.

#### 11. INVOLVEMENT OF OTHER AGENCIES AND THE PUBLIC

a. The President has directed Federal agencies to "develop procedures to insure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties" (Executive Order 11514). Policy and Procedure Memorandum 20-8 contains similar provisions. Interested parties should have adequate opportunities to express their views early enough in the study process to influence the course of studies, as well as the actions taken. Information about the existence, status, and results of studies should be made available to the public throughout those studies. The required public hearings (PPM 20-8) should be only one component of the agency's program to obtain public involvement.

b. The Action Plan should identify the assignment of responsibility and procedures to be followed:

(1) To ensure that information is made available to other agencies and the public throughout the duration of project studies, and that such information is as clear and comprehensible as practicable concerning:

(a) The alternatives being considered.

(b) The effects of alternatives, both beneficial and adverse, and the manner and extent to which specific groups are affected.

(c) Right-of-way and relocation assistance programs and relocation plans.

(d) The proposed time schedule of project development, including major points of public interest.

(2) To ensure that interested parties, including local governments and metropolitan, regional, State and Federal agencies, and the public have an opportunity to participate in an open exchange of views throughout the stages of project development.

(3) To select and coordinate procedures, in addition to formal public hearings, to be used to inform and involve the public.

(4) To utilize appropriate agencies with area-wide responsibilities to assist in the coordination of viewpoints during project development.

(5) To involve appropriately the organization which is officially established in urbanized areas of over 50,000 population to conduct continuing, comprehensive, cooperative transportation planning (consistent with PPM 50-9 and IM 50-3-71).

#### 12. SYSTEMATIC INTERDISCIPLINARY APPROACH

a. United States Code, Title 42, Section 4332 (National Environmental Policy Act, 1969) requires that agencies use "a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment."

b. The Action Plan should indicate procedural arrangements or assignments of responsibilities which will be necessary to meet this requirement including:

(1) The organization and staffing of interdisciplinary project groups which are systematic and interdisciplinary in approach, including the possible use of consultants and representatives of other State or local agencies.

(2) Recruitment and training of personnel with skills which are appropriate to add on a full-time basis, and the development of appropriate career patterns, including management opportunities.

(3) Additional training for present personnel to enhance their capabilities to work effectively in an interdisciplinary environment.

### 13. DECISIONMAKING PROCESS

a. The process of reaching various decisions on highway improvement projects should be reviewed to assure that it provides for the appropriate consideration of all economic, social, environmental, and transportation factors as required by these guidelines.

b. The Action Plan should identify:

(1) The processes through which other State and local agencies, government officials, and private groups may contribute to reaching decisions, and the authority, if any, which other agencies or government officials can exercise over decisions.

(2) Different decision processes, if any, for various categories of projects (e. g., Interstate, Primary, Secondary, TOPICS) and for various geographic regions of the State (e. g., in various urban and rural regions) to reflect local differences in the nature of potential environmental effects or in the structure of local governments and institutions.

(3) The processes to be used to obtain participation in decisions by officials of appropriate agencies in other States for those situations in which the potential social, economic, and environmental effects are of interstate concern.

### 14. INTERRELATION OF SYSTEM AND PROJECT DECISIONS

a. Many significant economic, social, and environmental effects of a proposed project are difficult to anticipate at the system planning stage and become clear only during location and design studies. Conversely many significant environmental effects of a proposed project are set at the system's planning stage. Decisions at the system and project stages shall be made with consideration of their social, economic, environmental, and transportation effects to the extent possible at each stage.

b. The Action Plan should identify:

(1) Procedures to be followed to:

(a) Ensure that potential social, economic, and environmental effects are identified insofar as practicable in system planning studies as well as in later stages of location and design.

(b) Provide for reconsideration of earlier decisions which may be occasioned by results of further study, the availability of additional information, or the passage of time between decisions.

(2) Assignment of responsibility for ensuring that project studies are effectively coordinated with system planning on a continuing basis.

### 15. LEVELS OF ACTION BY PROJECT CATEGORY

a. A Highway Agency may develop different procedures to be followed depending upon the economic, social, environmental, or transportation significance of the highway section to be developed. Different procedures may also be adopted for various categories of projects, such as TOPICS, new route locations, or secondary roads, and for various regions of the State, such as urban areas or zones of particular environmental significance.

b. The Action Plan should identify:

(1) The categories which the Highway Agency will use to distinguish the different degrees of effort which under normal circumstances will be devoted to various types of projects.

(2) Assignment of responsibility for determining, initially and in periodic reviews, the category of each ongoing highway project.

(3) Procedures to be followed for each category (including identification of impacts, public involvement, decision process, and other issues covered in these guidelines).

### 16. RESPONSIBILITY FOR IMPLEMENTATION

Assignment of responsibility for implementation of the Action Plan should be identified.

### 17. FISCAL AND OTHER RESOURCES

a. An important component of the Action Plan is identification of resources of the Highway Agency and of other agencies required to perform the identified procedures and execute the assigned responsibilities.

b. The Action Plan should identify:

(1) The resources of the Highway Agency (in terms of personnel and funding) that will be utilized in implementing and carrying out the Action Plan.

(2) Resources that are available in other agencies to provide necessary information on social, economic, and environmental effects.



(3) Programs for the addition of trained personnel or fiscal or other resources to either the Highway Agency itself or other agencies.

18. CONSISTENCY WITH EXISTING LAWS  
AND DIRECTIVES

The Highway Agency should identify and report, either in the Action Plan or otherwise, areas where existing Federal and State laws and administrative directives prevent or hamper full compliance with these guidelines. Where appropriate, recommendations and proposed actions to overcome such difficulties should be described.



R. R. Bartelsmeyer  
Acting Federal Highway Administrator

## TITLE 23 U. S. C. § 109(h)

(h) Not later than July 1, 1972, the Secretary, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than 90 days after such submission, promulgate guidelines designed to assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

- (1) air, noise, and water pollution;
- (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services;
- (3) adverse employment effects, and tax and property value losses;
- (4) injurious displacement of people, businesses and farms; and
- (5) disruption of desirable community and regional growth.

Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(i) The Secretary, after consultation with appropriate Federal, State, and local officials, shall develop and promulgate standards for highway noise levels compatible with different land uses and after July 1, 1972, shall not approve plans and specifications for any proposed project on any Federal-aid system for which location approval has not yet been secured unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards.

(j) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall develop and promulgate guidelines to assure that highways constructed pursuant to this title are consistent with any approved plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended.

As amended Pub.L. 89-574, §§ 5(a), 14, Sept. 13, 1966, 80 Stat. 767, 771; Pub.L. 91-605, Title I, § 136(a), (b), Dec. 31, 1970, 84 Stat. 1734.



TITLE 42 U. S. C. § 1857h-2(a)  
-2(b)

§ 1857h-2. Citizen suits—Establishment of right to bring suit

(a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

**Notice**

(b) No action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a) (2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 1857c--7(c) (1) (B) of this title or an order issued by the Administrator pursuant to section 1857c--8(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

TITLE 42 U. S. C. § 1857c-5(c)

**Preconditions for preparation and publication by Administrator of proposed regulations setting forth an implementation plan; hearings for proposed regulations; promulgation of regulations by Administrator**

(c) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(1) the State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

(2) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(3) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a) (2) (H) of this section.

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

ENVIRONMENTAL POLICY ACT

SUBSTITUTE SENATE BILL NO. 2069

PUBLIC ACT NO. 73-562

An Act concerning the adoption of a Connecticut Environmental Policy Act.

*Be it enacted by the Senate and House of Representatives in General Assembly convened:*

Section 1.

(a) In furtherance of and pursuant to sections 22a-1 and 22a-15 of the 1971 noncumulative supplement to the general statutes, the general assembly, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influence of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Connecticut residents.

(b) In order to carry out the policy set forth in this act, it is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs, and resources to the end that the state may:

- (1) Fulfill the responsibility of each generation as trustee of the environment for succeeding generations;
- (2) assure for all residents of the state safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our Connecticut heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (5) achieve an ecological balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

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**P.A. 73-562 JANUARY SESSION 1973**

**Sec. 2.**

The general assembly directs that, to the fullest extent possible:

(a) Each state department, institution or agency shall review its policies and practices to insure that they are consistent with the state's environmental policy.

(b) Each state department, institution or agency responsible for the primary recommendation or initiation of actions which may significantly affect the environment shall in the case of each such action make a written evaluation of:

(1) The consequences of the proposed action to the environment, including primary and secondary impacts on ecological systems;

(2) adverse environmental effects which cannot be avoided and irreversible and irretrievable commitments of resources should the proposal be implemented;

(3) alternatives to the proposed action.

(c) Each evaluation required by subsection (b) shall include an analysis relating the costs and benefits of the proposal over the short term to the costs and benefits over the long term.

**Sec. 3.**

Actions which may significantly affect the environment shall include those projects directly undertaken by state departments, institutions or agencies, or funded in whole or in part by the state, which could have a major impact on the state's land, water, air or other environmental resources, or could serve short term to the disadvantage of long term environmental goals.

**Sec. 4.**

Evaluations required by section 2 of this act need not be prepared for projects for which environmental statements have previously been prepared pursuant to other state or federal laws or regulations, provided all such statements shall be considered and reviewed as if they were prepared under this act.

**Sec. 5.**

Evaluations required by this act shall be in accordance with regulations promulgated by the commissioner of environmental protection.

**Sec. 6.**

(a) Evaluations required by this act and environmental statements otherwise required and prepared subsequent to this act shall be submitted for comment and review to the council on environmental quality, the department of environmental protection, and other appropriate agencies, and shall be made available to the public for inspection and comment at the same time.

(b) All comments received by the agency, department or institution preparing the evaluation shall be forwarded to the state planning council.

(c) All comments so forwarded to the state planning council shall be available for public inspection.

**Sec. 7.**

The state planning council shall review all such evaluations and statements, together with the comments thereon, and shall make a written recommendation to the governor regarding the proposed state action, which recommendation shall be made public.

**Sec. 8.** This act shall take effect February 1, 1975.

Approved June 22, 1973.

# State of Connecticut



Robert K. Killian  
ATTORNEY GENERAL

REPLY TO:

Office of The Attorney General  
90 BRAINARD ROAD  
HARTFORD 06114

December 27, 1974

A. Daniel Fusaro, Esquire  
Clerk, U.S. Court of Appeals  
Second Circuit  
U.S. Courthouse  
Foley Square  
New York, New York 10007

Re: Connecticut Transportation Coalition, et al  
v. Thomas J. Meskill, Governor of the State  
of Connecticut, et al  
Court of Appeals Docket No. 74-2149

Dear Mr. Fusaro:

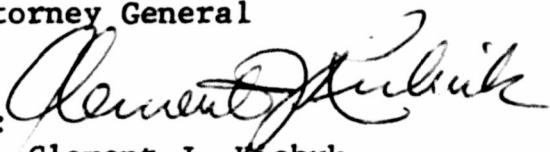
Pursuant to the requirements of the Federal Rules of Appellate Procedure, we are enclosing herewith 25 copies of the State-Appellees' brief for filing in the above-entitled appeal.

Two copies of the brief are being served on counsel for the plaintiffs-appellants as set forth in the enclosed certificate of service.

Very truly yours,

Robert K. Killian  
Attorney General

By:

  
Clement J. Kichuk  
Assistant Attorney General  
(203 566-3946)

CJK:ahk  
Enclosures

cc: Bruce Mayor, Esquire